

**REMARKS**

Applicants are responding to a notice of Non-Complaint Amendment under 37 C.F.R. § 1.121. In the above referenced Office Action, it has been indicated that the status all the claims was not presented in a previously submitted response and amendment. Within this response, the status of all of the pending claims in this Application is indicated. Specifically it stated within the Office Action that the status of Claim 5 is incorrect because there are no markings. However, Claim 5 has been canceled. Accordingly, Applicant contends that the Office Action was direct to an improper status for Claim 6. For convenience, a duplicate of the previously submitted remarks section is also submitted herewith. Accordingly, hereafter, "the Office Action" refers to the Office Action mailed July 18, 2007.

Applicant respectfully requests further examination and reconsideration in view of the above amendments and arguments set forth fully below. Claims 1-23 were previously pending in the instant application. Within the Office Action, Claims 1-23 have been rejected. By way of the above amendments Claims 1, 4, 13 and 21 have been amended and Claim 5 has been canceled. Accordingly, Claims 1-4 and 6-23 are now pending in this application.

**Double Patenting:**

Claims 1, 5, 6, 13, 19 and 21 have been provisionally rejected based on the judicially created doctrine of double patenting over Claims recited in the co-pending and commonly own Patent Application Serial No. 11/212,510. Please find the attached terminal disclaimer being timely filed along with this response to overcome the provisional rejection of Claims 1, 5, 6, 13, 19 and 21 in the present Application over Claims recited in the co-pending and commonly own Patent Application Serial No. 11/212,510.

**Rejections Under 35 U.S.C. § 112**

Within the Office Action Claim 4 has been rejected under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. Specifically, it is stated with the Office Action that the limitation of a "detachable connector" is not disclosed in the Specification. Applicant respectfully disagrees for the following reason. Within the Specification of the present application it is clearly stated that "the system can also include water resistant speaker units, such as described above, that are configured to detachably couple to the MP3 player unit through connectors on the water resistant housing or the water resistant speaker

units can be integrally formed with the water resistant housing.” [ Page 5, line 27 to Page 6, lines 1-3, Specification] However, to further advance the prosecution of this Application the limitation of a “detachable connector” recited in the Claim 4 has been amended to recite “connector.”

5           Within the Office Action, Claim 6 has been rejected 35 U.S.C. § 112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, it is stated within the Office Action that the recitation of the term “the sealed diaphragm” fails to find sufficient antecedent bases. By way of the above amendment, Claim 5 has been canceled and its contents incorporated into the independent Claim 1, which recites “a sealed diaphragm.” Accordingly, there is now sufficient antecedent basis for the term “the sealed diaphragm” recited in the independent Claim 6, which depends from the independent Claim .

**Rejections Under 35 U.S.C. § 102(b)**

15           Within the Office Action, Claims 1-3, 6-8, 10, 12-18 and 20-23 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Publication No. 2004/0160572 A1 to Jannard et. al (hereafter “Jannard”). Within the Office Action, it is stated that Jannard teaches and system for underwater entertainment with the a water resistant housing. Specific, attention is drawn to paragraph 136 of the Specification of Jannard. Paragraph 136 of Jannard states that “as another alternative, the aperture can be configured to extend upwardly from the transducer and toward the head 18, this configuration being identified by the numeral 79. By configuring the aperture 79 to extend upwardly from the transducer 76 and toward the head 18, the aperture 79 is further protected from wind which can cause noise. However, in this orientation, the aperture 79 is more likely to collect water that may inadvertently splash onto the aperture 79. Thus, the aperture configuration identified by the numeral 77 provides a further advantage in that water is less likely to enter the aperture 77. Any water that may enter the aperture 77 will drain therefrom due to gravity.”

25           Applicant respectfully points out that throughout the entire and lengthy Specification of Jannard, this is the only place where the term “water” is mentioned. Further, Jannard is simply pointing out that orientation of an aperture can be configured to allow for drainage of water in the event that water get splashed on the device. Jannard in no way suggesting or teaching a device that is to be used in an aquatic environment. Further Jannard fail to teach or suggest any elements of a device that are required to make the device operable underwater, such as a water

resistant speaker or water resistant head phones with the **sealed diaphragms**, such as recited in each of the independent Claims 1, 13 and 21.

Claims 2, 3, 6-8, 10 and 12 are all dependent on the independent Claim 1; Claims 14-18 and 20 are all dependent on the independent Claim 13; and Claims 22 and 23 are both dependent on the independent Claim 21. As described above, the independent Claims 1, 13 and 21 are all allowable over the teachings of Jannard. Accordingly, Claims 2, 3, 6-8, 10, 12, 14-18, 20, 22 and 23 are also all allowable as being dependent on an allowable base claims.

**Rejections Under 35 U.S.C. § 103(a)**

Within the Office Action, Claim 4 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Jannard in view U.S. Publication No. 2002/0176593 A1 to Magnusson et al. and Claims 5, 9, 11 and 19 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Jannard.

Claim 5 has been canceled. Claim 4, 9 and 11 depend from the independent Claim 1 and Claim 19 depends from the independent Claim 13. As described above, the independent Claims 1 and 13 are both allowable over the teachings of Jannard. Accordingly, Claims 4, 5 and 11 are also all allowable as being dependent on allowable base claims.

For the reasons given above, Applicants respectfully submit that Claims 1-4 and 6-23 are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, the Examiner is encouraged to call the undersigned at (408) 530-9700 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,  
HAVERSTOCK & OWENS LLP

Dated: 2/15/08

By: 

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**CERTIFICATE OF MAILING (37 CFR § 1.8(a))**

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to the: Commissioner for Patents, P.O. Box 1450 Alexandria, VA 22313-1450

HAVERSTOCK & OWENS LLP.

Date: 2/15/08

By: Julia M.